

**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

WILD HORSE EDUCATION, *et al.*,

Plaintiffs,

v.

U.S. BUREAU OF LAND
MANAGEMENT, *et al.*,

Federal Defendants.

Case No. 3:23-cv-00372-MMD-CLB

**SECOND DECLARATION OF
BENJAMIN F. NOYES**

I, Benjamin F. Noyes, make the following declaration pursuant to 28 U.S.C. § 1746:

1. Since 2006, I have served as the Bureau of Land Management (BLM) Ely District, Bristlecone Field Office's Wild Horse and Burro Specialist.
2. I hold a Bachelor of Inter-Disciplinary Studies with a concentration in Agriculture Science. My curricula included numerous courses directly relevant to the care, treatment, and nutrition of horses, including Horse Science, Horsemanship 1, Horsemanship 2, and Animal Feeding and Nutrition.
3. I grew up with and have extensive knowledge of horses. My family raises quarter horses and is very involved in their animals' breeding and care and training and showing. I train horses from weanlings to finished horses. I farrier (shoe), groom, and when they are ill, treat horses. I have competed in 4-H, and high school and college rodeo, and still compete in both rodeo and roping competitions. I am a current member of the American Quarter Horse Association, World Series of Team Roping, and the American Cowboy Team Roping Association.
4. I currently own 12 horses and over the past 35 years have owned more than 45. My passion for horses does not tolerate their inhumane treatment, personally or professionally, be they domestic or wild.
5. My desire to work around horses motivated me to accept a position as a BLM Wild Horse and Burro Specialist, caring for and ensuring the well-being of wild horses in eastern Nevada.
6. As a BLM Wild Horse and Burro Specialist, I am responsible for the management of wild horses within the Ely District and administer two Herd Management Areas (HMAs) (the Antelope HMA within Antelope Complex and the Triple B within the Triple B Complex). My duties include monitoring wild horse conditions in the HMAs and herd areas (HAs) and evaluating and resolving escalating issues through use of appropriate measures. These measures can include, but are not limited to, water hauling and/or conducting an emergency gather. I also collect data to ascertain wild horse impacts to rangeland resources and habitat components

relevant to determining whether Appropriate Management Levels (AMLs) require modification to ensure a thriving natural ecological balance.

7. The BLM makes every effort to ensure that gather operations are conducted in a humane manner. It is always tragic to have any death loss during a gather operation. Unfortunately, wild horses are wild animals and can behave in unpredictable ways that can lead to injury. Even though the loss of even one horse on a gather is heartbreaking, there are risks associated with the gathering or handling of wild animals that cannot be completely eliminated. Horses may also have pre-existing chronic conditions unrelated to the gather that lead to mortality.

8. Wild horse mortality for gathers operations are characterized as either “acute” or “chronic” deaths. Acute/sudden deaths are due to recent or sudden injuries or medical conditions, including those that occurred or developed during capture or captivity, such as recent fractures, injuries, respiratory infections, other illnesses, etc. Chronic deaths refer to animals that are humanely euthanized due to conditions existing prior to capture, such as poor body condition, lameness, physical defects, and the like. Those chronic conditions mean that the horses have a poor long-term prognosis and euthanization is the humane option.

9. A 2008 Government Accountability Office report on the WH&B Program states that “BLM’s controls for gather include standard operating procedures, inspections, and data collection.” See **Exhibit 8** (page 46). “Data collected from 6 of the 10 states from fiscal years 2005 through 2007 indicate that mortality as a result of gathers is about 1.2 %.” See **Exhibit 8** (page 47).

10. A more recent study published in Journal of Equine Veterinary Science reviewed data from 2010-2019 gather operations and found that helicopter gathers had an average of 1% mortality and water/bait trapping had 1.7% mortality. Again, these rates combine both acute and chronic deaths. For acute deaths, the rate was about 0.28% for helicopter gathers, i.e., 1 death per 300 horses for large gathers. The study also notes that “given the capture-related mortality rates from these studies, and the recommendation that >2% capture mortality is unacceptable, it seems that BLM horse and burro welfare is generally being optimized to a level acceptable across other animal handling disciplines.” The study also noted other wildlife capture mortality rates, such as for white-tail deer at 2% to 20.7% and caribou calves darted from helicopter at 0.5% to 4.1%. See **Exhibit 9**.

11. To ensure consistent standards and humane treatment by BLM staff and contractors involved in gathering, handling, or caring for wild horses and burros, BLM developed a Comprehensive Animal Welfare Program (CAWP), which formalized standard operating procedures while providing guidance and training to re-affirm and demonstrate the agency’s commitment to humane treatment of wild horses and burros. The standard operating procedures were issued in 2015 following BLM consultation with, and input by, outside experts that included researchers, academia (from University of California Davis School of Veterinary Medicine) and veterinarians, to provide internal guidance for BLM WH&B Specialists and to ensure consistent humane treatment of wild horses and burros. See Wild Horse and Burro Comprehensive Animal Welfare Program, Permanent Instruction Memorandum 2021-002, available at: <https://www.blm.gov/policy/pim-2021-002> (last visited October 23, 2024); ECF Nos. 40-2 & 40-3 [attaching CAWP standards]. The CAWP standard operating procedures are

also incorporated as enforceable standards into contracts with independent contractors for gather and operation of off-range corrals. In addition to these written CAWP standards, BLM has identified WH&B experts throughout the Western States who can be (and are) sent in small teams to ensure compliance with the CAWP, and to identify any remedial actions that may be required. More information regarding the CAWP is publicly available on BLM's website for the *Comprehensive Animal Welfare Program*, BLM, <https://www.blm.gov/programs/wild-horse-and-burro/comprehensive-animal-welfare-program#:~:text=The%20Bureau%20of%20Land%20Management's,the%20agency's%20management%20and%20protection> (last accessed October 23, 2024).

12. All helicopter gather operations have an on-site veterinarian(s) from the U.S. Department of Agriculture Animal and Plant Health Inspection Service (APHIS) assessing and monitoring animal conditions on a daily basis, as well as consulting with the BLM gather staff to ensure the health and well-being of wild horses. If the veterinarian has concerns about the gather operations and wild horse welfare (including heat concerns), those are shared with the BLM Contracting Officer's Representative (COR) so prompt action can be taken to remedy any concerns.

13. I am one of the 16 team members of BLM's Comprehensive Animal Welfare Program (CAWP) for the Wild Horse and Burro Program. The purpose of the CAWP is to re-affirm and demonstrate BLM's longstanding commitment to ensure that humane treatment of wild horses and burros in all on and off-Range management activities. BLM is committed to protecting animal welfare and providing humane care and treatment of wild horses and burros. The purpose of the CAWP Team is to advise and assist the CAWP Coordinator and the Wild Horse and Burro Program as we develop and implement components of the CAWP. As part of the CAWP Team, I assist in developing standards, training on the standards, and assist with completing internal formal assessments of management activities including gather operations. As a member of the CAWP Team, I have led on two and assisted with three CAWP Team Assessments for wild horse and burro gather operations, and I have also been assessed by the CAWP Team for wild horse and burro gather operations. I know the CAWP Standards and have worked to ensure those people that are on any wild horse and burro gathers are familiar and knowledgeable about the standards and that we ensure the care and compassion for the wild horses and burros that we manage. I was selected to be part of the CAWP Team because I was actively implementing the standards, had taken the initiative to complete self-assessment of the wild horse and burro gathers that I had conducted as a COR and Incident Commander (IC), as well as my on-range monitoring program and firsthand experience in handling difficult animal welfare situations on the range.

14. The Triple B Complex 2018 Wild Horse Gather started 1/31/2018 and concluded 2/23/2018. I was the IC for this gather. During this gather, 1,389 wild horses were gathered and 1,327 excess wild horses were removed. A total of 62 animals were released which included 28 mares treated with fertility control. Out of 1,389 wild horses captured, the total mortality (from acute and chronic causes) was 30 wild horses or 2.1%. Only two (2) deaths occurred due to acute/sudden injuries caused by the gather, which represents a 0.1% acute mortality rate. Another 28 horses came in with pre-existing chronic conditions (e.g., blindness, infection, deformity, and hernia) and were humanely euthanized in accordance with BLM Permanent Instruction Memorandum (PIM) 2021-007 (Euthanasia of Wild Horses and Burros Related to Acts of Mercy, Health or Safety). See **Exhibit 10**. These equate to a 2% mortality due to pre-existing

chronic conditions. Daily gather reports for the 2018 Triple B Complex are posted online at <https://www.blm.gov/programs/wild-horse-and-burro/herd-management/gathers-and-removals/nevada/2018-Triple-B-Complex-wild-horse-gather> (last visited October 23, 2024).

15. The Triple B Complex 2019 Wild Horse Gather started 7/8/2019 and concluded 7/16/2019. I was the Incident Commander (IC) for this gather. During this gather 804 wild horses were gathered and 803 excess wild horses were removed. Out of 804 wild horses captured, the total mortality (from acute and chronic causes) was 16 wild horses or 1.9%. Only six (6) deaths occurred due to acute/sudden injuries caused by the gather, which represents a 0.8% acute mortality rate. Another ten (10) horses came in with pre-existing chronic conditions (e.g., blindness, infection, deformity, and hernia) and were humanely euthanized in accordance with PIM 2021-007. These equate to a 1.1% mortality due to pre-existing chronic conditions. Daily gather reports for the 2018 Triple B Complex are posted online at <https://www.blm.gov/programs/wild-horse-and-burro/herd-management/gathers-and-removals/nevada/2019-triple-b-complex-wild-horse-gather> (last visited October 23, 2024). In reviewing the information from this gather, I discovered that the BLM's public website had reported incorrect numbers for acute and chronic deaths, although the total death number was correct. The website will be corrected.

16. The Triple B Complex 2020 Water/Bait Wild Horse Gather started 7/28/2020 and concluded 8/22/2020. I was a COR for this gather. During this gather 391 excess wild horses were gathered and removed. Out of 391 wild horses captured, the total mortality (from acute and chronic causes) was 9 wild horses or 2.3%. Only one (1) death occurred due to acute/sudden injuries caused by the gather, which represents a 0.2% acute mortality rate. Another 8 horses came in with pre-existing chronic conditions (e.g., blindness, infection, deformity, and hernia) and were humanely euthanized in accordance with PIM 2021-007. These equate to a 2% mortality due to pre-existing chronic conditions. Daily gather reports for the 2020 Triple B Complex Emergency Water/Bait Gather are posted online at <https://www.blm.gov/site-page/wild-horse-and-burro/herd-management/gathers-and-removals-2020-triple-b-maverick-medicine> (last visited October 23, 2024).

17. The Triple B Complex 2022 Wild Horse Gather started 7/15/2022 and concluded 8/25/2022. I was the Incident Commander (IC) for this gather. During this gather 1,897 wild horses were gathered and 1,872 excess wild horses were removed. Approximately 100 animals were released and 50 mares were treated with fertility control. Out of 1,897 wild horses captured, the total mortality (from acute and chronic causes) was 23 wild horses or 1.2%. Only six (6) deaths occurred due to acute/sudden injuries caused by the gather, which represents a .3% acute mortality rate. Another 17 horses came in with pre-existing chronic conditions (e.g., blindness, infection, deformity, and hernia) and were humanely euthanized in accordance with PIM 2021-007. These equate to a .9% mortality due to pre-existing chronic conditions. Daily gather reports for the 2022 Triple B Complex gather are posted online at <https://www.blm.gov/programs/wild-horse-and-burro/herd-management/gathers-and-removals/nevada-elko-do/2022-triple-b> (last visited October 23, 2024).

18. From July 18 through 20, 2022, a CAWP Team was present to assess the 2022 gather at the Triple B Complex. The CAWP team found that the 2022 Triple B Complex Wild Horse gather was being conducted in compliance with the Standards (96%). *See Exhibit 11.*

19. The 2024 Maverick Medicine Emergency Water/Bait Gather started on 8/29/2024 and ended on 9/2/2024, with a total 109 excess wild horses gathered and removed. I was the Incident Commander (IC) for this gather. Out of the 109 captured, the total mortality (from acute and chronic causes) was 3 wild horses or 2.7%. One (1) death occurred due to acute/sudden injuries caused by the gather, which represents a 0.9% acute mortality rate during gather operations. Another two (2) horses came in with pre-existing conditions and were humanely euthanized in accordance with PIM 2021-007. These equate to 1.8.% mortality rate due to chronic pre-existing conditions. The daily gather reports for the Maverick-Medicine Emergency Wild Horse gather are posted online at <https://www.blm.gov/programs/wild-horse-and-burro/herd-management/gathers-and-removals/nevada-elko-do/2024-maverick> (last visited October 23, 2024).

20. Since May 2024, the Triple B Complex has experienced a very dry summer leaving many water sources dry or with little water. Horses are congregating limited water sources throughout the Complex. Photographs 1 and 2 ¹ illustrate this problem.



Photograph 1: Butte Spring, showing very little water available for wild horses in June 2024.

¹ I personally took the photographs included as Photograph 1 and 2. Photograph 3 was taken by Sadie Leyba, BLM Wild Horse and Burro Specialist, Bristlecone Field Office, Ely District, Nevada.



Photograph 2: June 20 2024, 70 horses waiting around a trough in south long valley.

21. Vegetation for the 2024 year started out above average but with the lack of rain and moisture throughout the summer many of the plants only grew 3-4 inches instead of what may have grown 6-10 inches on an average year.



Photograph 3: Butte Valley crested wheat seeding with very little forage in March 2024.

22. In my 18 years as a wild horse specialist, I have come to appreciate how tough these wild horses truly are and how they have naturally evolved to be extremely tough and hardy. In watching these wild horses, especially during the spring and early summer months, bands of horses will come running from the hills 5-10 miles away, many times with newborn foals, to get a drink of water. They may water for 15-20 minutes and then take off at a trot or lope back into the foothills. Any horses that cannot keep up that pace are herded aggressively by the stallion to keep the band together and away from other groups of horses. This takes place at all hours even in the heat of the day on the hottest days. This has made these horses very strong and able to travel far distances in severe climates through natural selection. If wild horses can't keep up due to a lameness or other physical reasons, they do not make it.

23. Despite the toughness of these wild horses, the current conditions in the Triple B Complex mean that there is very little forage and water available for the horses. Without a gather, the BLM will likely be forced to conduct emergency gathers or horses may suffer and die. It is very likely that some of the horses moving into winter will not have adequate forage or water resources to sustain their current Body Conditions Score (BCS 3-4). The younger weanlings will likely suffer the most as they are the last to eat and drink as they are being pushed off the mares. Without enough forage and water these horses may lack the energy to keep up with the main band and may not move to other areas as the winter approaches. The pregnant mares will likely be able to keep up with the main band of horses. In the spring, these horses will be in poor condition and many of the new foals will be malnourished and or die because the mares do not have adequate feed and water to maintain their body condition and produce enough milk for their foal. If this winter snow is above average it could be catastrophic to the horses in the triple B Complex, if the winter snow or moisture is below average it could leave to a dry spring with less forage and water next year which again could be catastrophic to these horses.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge, information, and belief.

BENJAMIN F. NOYES
Wild Horse and Burro Specialist
BLM Nevada, Ely District